ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 7, 2006

Mr. Gary A. Scott
Assistant City Attorney
City of Conroe
P. O. Box 3066
Conroe, Texas 77305

OR2006-10382

Dear Mr. Scott:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 263546.

The Conroe Police Department (the "department") received a request for a specified offense report. You claim that the requested information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted report.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses section 58.007 of the Family Code. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. For purposes of section 58.007, "child" means a person who is ten years of age or older and under seventeen years of age at the time of the reported conduct. *See* Fam. Code § 51.02(2). Section 58.007(c) reads as follows:

> Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

> (1) if maintained on paper or microfilm, kept separate from adult files and records;
>
> (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and
>
> (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Id. § 58.007. You seek to withhold the submitted report under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. However, the submitted report does not list a juvenile as a suspect or offender for the incident that is the basis for the report because the suspect was seventeen (17) years of age at the time of the alleged offense. Therefore, we conclude that the submitted report is not a juvenile law enforcement record and no portion of it may be withheld under section 552.101 in conjunction with section 58.007(c).

You also assert that the submitted report is excepted from disclosure under section 552.108(a)(1) of the Government Code, which excepts "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime [if] release of the information would interfere with the detection, investigation, or prosecution of crime." A governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the submitted report relates to a pending criminal investigation. Based upon this representation and our review, we conclude that section 552.108(a)(1) is applicable in this instance, and the release of this information would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e.*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

We note, however, that section 552.108 does not except basic information about an arrested person, an arrest, or a crime. Gov' t Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-87. Thus, the city must release basic information. *See* Open Records Division No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). However, because the submitted report includes an arrestee's social security number, and section 552.147 of the Government Code provides that "[t]he social security number of a living person is excepted

from" required public disclosure under the Act,[1] the department must withhold the social security number of the arrested person we have marked in the submitted report. The department may withhold the remaining information pursuant to section 552.108(a)(1) of the Government Code.

In summary: (1) except for the basic information that must be released under section 552.108(c), the department may withhold the submitted report under section 552.108(a)(1) of the Government Code; and (2) the department must withhold the arrested person's social security number which we have marked under section 552.147 of the Government Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental

---

[1]We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

Alix K. Cornett

Alix K. Cornett
Assistant Attorney General
Open Records Division

AKC/krl

Ref: ID# 263546

Enc. Submitted documents

c: Ms. Janine Pierucci
2224 Highpoint Meadow
Conroe, Texas 77304
(w/o enclosures)